



**Virginia  
Regulatory  
Town Hall**

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**Proposed Regulation  
Agency Background Document**

<b>Agency Name:</b>	Department for the Deaf and Hard of Hearing
<b>VAC Chapter Number:</b>	22VAC20-20
<b>Regulation Title:</b>	Regulations Governing Eligibility Standards and Application Procedures for the Distribution of Technological Assistance Devices
<b>Action Title:</b>	Periodic Review Result
<b>Date:</b>	August 15, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

**Summary**

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

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This regulation establishes eligibility and application standards for the Virginia Department for the Deaf and Hard of Hearing Technology Assistance Program. The regulation includes criteria for determining applicant's financial participation. The proposed amendments are intended to clarify and update language and to enhance program effectiveness and efficiency. Specifically, the agency is proposing to incorporate a requirement for proof of residency, income, and proof of receipt of equipment through the program, and to adopt 250% of the Federal Poverty Guidelines, adjusted annually, as the demarcation between applicants who will receive equipment at

no cost and those who must pay full contract cost. The regulation eliminates the partial pay category of applicants.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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Virginia Code §63.1-85.4.9 authorizes the Virginia Department for the Deaf and Hard of Hearing to promulgate regulations as may be necessary to carry out the powers and duties of the agency. Further, Virginia Code §63.1-85.4.8 authorizes the agency to operate a program of technology assistance, including equipment distribution. Both of these provisions are discretionary.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The proposed amendments to this regulation emerged from the Periodic Review of Regulations conducted in 2000. During that review, the agency hosted a focus group in an effort to elicit direct comments on the regulation and specific suggestions for improvement. As a result of this focus group and general public comment received during the Review, the agency has reviewed the financial eligibility requirements and documentation required in determining eligibility. The focus group was especially concerned that proof of income should be required. Agency staff periodically reviews random applications and has identified that a percentage of applicants state their income to be within several dollars per year of the previously published Economic Needs Guidelines, indicating that some applicants are manipulating the information in order to qualify for free equipment. In order to maintain the integrity of the program, the agency is proposing a clear statement that we reserve the right to verify income. In addition, the agency has identified concerns about proof of residency. Other states with distribution programs require proof of residency and the availability of program applications on the internet makes the potential for fraud greater than in the past. As a result, VDDHH is proposing a requirement for proof of residency. By ensuring that only persons who meet

all eligibility requirements are approved for program participation, the agency is able to reach the maximum number of citizens who will benefit from the critical communications access provided by this program.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

The following detailed changes are being proposed:

1. The agency proposes to incorporate a statement that we reserve the right to verify income information provided by the applicant and that it is the applicant's responsibility to provide correct and verifiable income information.
2. The agency proposes to incorporate a requirement for proof of residency. Specifically, the agency proposes requiring a recent utility bill or a current lease or deed for a property in Virginia in the name of the applicant, the applicant's spouse or the applicant's legal guardian or other approved documentation (to be established in agency policy) as proof of residency.
3. Specific dollar amounts in the Economic Income Guidelines are eliminated and replaced with the incorporation by reference of the Federal Poverty Guidelines published annually in the Federal Register.
4. The agency has eliminated the partial pay (up to \$75) category for program participants. Instead, applicants whose income is at or below 250% of the Federal Poverty Guidelines will receive equipment at no cost. Applicants whose income exceeds 250% of the Federal Poverty Guidelines will be eligible to purchase equipment at the state contract cost.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

**Advantages to the Public:** Increased program accountability through requirements for proof of residency and income verification ensures that program funds will be used only for those who are truly eligible. The elimination of the partial pay option will reduce consumer confusion about this aspect of the program. Adopting the Federal Poverty Guidelines as the basis for determining financial participation ensures that the guidelines will remain current and appropriate for program participants. In addition, based on a

sample analysis applying the new financial participation guidelines to past program participants, approximately 86% of participants who were required to pay up to \$75 for equipment in the past will be eligible for the same equipment at no cost under the new regulation.

**Disadvantages to the Public:** Based on a sample analysis applying the new financial participation guidelines to past program participants, approximately 14% of program participants will be negatively impacted by the elimination of the partial pay option. These participants, earning more than 250% of the Federal Poverty Guidelines, will be required to pay the full contract cost for equipment under the new regulation as opposed to a maximum of \$75 under the old regulation. Another perceived disadvantage to the public is the need to provide proof of residency and the possibility of verification of income. Since its inception, the program has depended upon the honor of program participants to ensure that the information they provided was correct. This new requirement for proof may seem intrusive to some program participants.

**Advantages to the Commonwealth:** The primary advantages of the proposed amendments to the Commonwealth are those of increased program accountability and fiscal responsibility. The requirement for proof residency and the reserved right to verify income will only minimally increase the processing time for applications yet will result in greater fiscal accountability. Proof of residency requirements will ensure that the program benefits only Virginia citizens. In addition, the elimination of the partial payment category of program participants will reduce the overall complexity of processing applications, resulting in a more efficient program.

**Disadvantages to the Commonwealth:** The new financial participation guidelines will result in slightly increased costs for equipment purchase as approximately 86% individuals who were previously required to pay a portion of the equipment costs will now be eligible for the equipment at no cost. This disadvantage is partially offset by the reduction in processing required for program applications.

## Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and (e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

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Fiscal impact of the amended regulation will be minimal. The primary source of impact will be the change in financial participation guidelines. Under the proposed guidelines, the agency anticipates that an additional \$4000 will be spent each year in the purchase of devices for program participants. This amount is within the amount currently budgeted for the program and should not require any additional funds. Administrative costs for

implementing the new regulations will also be absorbed within existing funds. These include adjusting the database used in processing applications, the costs of printing new program applications and the costs of educating the public as to the changes.

The elimination of the “partial pay” option under financial participation will result in a theoretical savings for the agency by freeing up staff time currently spent responding to questions and issues surrounding “partial pay” recipients. Staff attention will be able to be re-directed to other program activities, including public education and awareness.

The program is funded with General Fund dollars and the agency does not anticipate that any additional appropriation will be needed to address the impact of the proposed changes to this regulation.

Local governments will not be impacted.

The agency estimates that an average of 800 individuals annually will be impacted by the amended regulations. This represents the number of applications received each year. The potential impact is on the estimated 8.6% of the total population who are deaf or hard of hearing and who could be eligible to participate in the program. Realistically, the agency realizes that this program only serves a small percentage of that total. The estimated impact on those individuals will vary but, in no case will it be more than approximately \$600. In fact, only 14% of the total will experience any fiscal impact and, of those, only a few dozen individuals will feel the maximum impact.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

### 22VAC20-20-10 Definitions

#### Definitions Added:

“Assistive Technology Equipment” replaces the term “Technological Assistance Devices.” This new term is more commonly used among affected constituents.

References were changed throughout the regulation.

“Vendor” was added to assist affected constituents in understanding the distribution process.

#### Definitions Deleted:

“Coordinator” is deleted because program administrative structure has changed and may change again in the future. Reference to the agency or agency staff is sufficient for clarity.

“Technological Assistive Device” was deleted and replaced with “Assistive Technology Equipment”, as explained above.

“Voice carryover screen” is deleted because it is not essential to understanding the regulation.

#### Definitions Modified:

“Applicant”, “coupon”, “program”, and “recipient” are updated to reflect the change in reference to “Assistive Technology Equipment”.

“Application” – the form number has been corrected.

“Deaf-blind” has been changed to “DeafBlind” to reflect current usage.

“Fiscal constraint” has been clarified.

“Public Assistance” has been amended to clarify what programs constitute such assistance.

Other changes in definitions were strictly editorial.

#### 22VAC20-20-20 Ownership Guidelines

Editorial changes only.

#### 22VAC20-20-30 Eligibility Requirements

The regulation has been amended to require proof of residency in the form of a current lease or deed for a domicile in Virginia or a recent public utility bill for a residence in Virginia, or other forms of proof approved by the agency. In addition, the regulation has been amended to require that the applicant provide correct and verifiable income information, noting that the department reserves the right to verify income. This was deemed necessary to maintain the integrity of the program in an increasingly mobile society and in light of internet access to program information.

#### 22VAC20-20-40 Charges for Equipment

The primary change in this section is the elimination of the Statewide Economic Needs Guidelines and the Northern Virginia Economic Needs Guidelines. Instead, the agency is proposing to adopt 250% of the Federal Poverty Guidelines as the baseline for determining whether an applicant will receive equipment at no charge or at the state contract cost; the partial pay option is eliminated. This will result in greater program efficiency and less confusion for program applicants. This section has also been changed to allow the agency to receive payment from applicants. This is necessary to allow for spot-purchasing of equipment in an effort to reduce program costs.

#### 22VAC20-20-50

Editorial changes only.

#### 22VAC20-20-60

Editorial changes and corrections only.

#### 22VAC20-20-70

Substantive changes in this section include:

- the requirement that applicants for replacements for damaged equipment provide proof that homeowners or renters insurance did not cover the loss. This is necessary to ensure that state taxpayer dollars are not being used to cover costs that have already been assumed by private insurance.

Other changes in this section are strictly editorial.

22VAC20-20-80

Editorial change only.

22VAC20-20-90

Editorial change only.

22VAC20-20-110

Editorial change only.

## Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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The agency did not consider any alternatives to regulation for two reasons. First, this regulation involves the purchase of equipment for consumers using, in many instances, taxpayer dollars for the purchase. The use of taxpayer dollars for such purchases demands a carefully regulated program to ensure fiscal responsibility and consistency. Second, program participation requires applicants to reveal personal information to the agency and those applicants have a right to clearly stated rules regarding the use of that information. The regulation has been crafted to be the least burdensome alternative.

## Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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Two individuals provided comment during the Public Comment Period. One individual supported the need for proof of residency and suggested that a lease or utility bill could be used for such proof. The agency concurs with this comment.

One individual concurred that a “means test” is important for eligibility but was opposed to requiring a copy of income tax return, suggesting that a “...questionnaire, certified to be true...” could serve as proof. The agency notes that the program application has always included such a mechanism and that on numerous occasions the information

provided has proven to be questionable. In the proposed regulation, the agency clearly states that verification of income information provided on the application may be required.

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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During the Periodic Review of the Regulation, the agency convened a focus group meeting and included specific discussion on the clarity of the regulation in that meeting. Several issues of clarity arose during that meeting and each have been addressed in the proposed regulation. Some of the changes included selection of more consumer-friendly terms and elimination of convoluted and complicated language constructions. The agency is confident that the resulting regulation is clearly written and will be easily understood by the individuals and entities affected.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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The regulation has two specific and measurable goals. The first of these is to provide a program of technology assistance in which the financial contribution of program participants is based on clear economic guidelines. Based on the Periodic Review, the agency has determined that, while this goal is being met technically, it is not being met fully in the spirit in which it was intended. As written, the regulation does not provide information on the source of the Economic Needs Guidelines. This could lead consumers to believe that the income levels set for the program were set arbitrarily by the agency. The second goal, to provide an application procedure which requires minimal information needed to make a determination of eligibility, is not being met to the fullest extent possible. The current regulation does not require documentation of residency and income, and, as commenters and the focus group noted, such information should be considered essential in a program based on financial eligibility.

The regulation is essential to protect the health, safety and welfare of citizens because it establishes requirements for a program that distributes equipment which is critical for persons who are deaf, hard of hearing, or speech-impaired and their families. The equipment in this program provides telecommunications access in all situations, including medical-, employment- and emergency-related events. Because program



participants must provide information of a personal and confidential nature, the regulation is necessary to ensure that those participants have access to the technology available through the program while also having confidence that their personal information is maintained in a confidential manner.

### Family Impact Statement

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulatory action will have an overall positive impact on the family. The regulated program provides critical access to tools for communication for families where one or more family members are deaf or hard of hearing. Such communications access is essential both from the parenting perspective and from the perspective of encouraging self-sufficiency and responsibility. The regulation requirement for full financial participation of those who exceed the Economic Needs Guidelines may appear to decrease disposable family income as compared with the commenters proposal to reinstate a \$75 cap on individual contributions. The modified Economic Needs Guidelines have been carefully considered and are expected to negatively impact fewer than 15% of program applicants – i.e. those with an income greater than 250% of the Federal Poverty Guidelines. The agency is confident that this perception can and will be ameliorated by the addition of lower cost equipment to the program - a step that may be achieved without regulatory action. In addition, even those who would be eligible only to purchase the equipment at the contract cost benefit in two ways. First, the contract cost is as much as 50% lower than retail cost for the same devices. Second, devices purchased at contract cost come with a five-year warranty, a benefit that could produce significant cost-savings for those families through the warranty period.